

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0139, State of New Hampshire v. William Docos, the court on December 21, 2007, issued the following order:

The defendant, William Docos, appeals his conviction for operating a motor vehicle while certified as a habitual offender. He argues that the trial court erred by precluding him from raising a competing harms defense. See RSA 627:3 (2007). We affirm.

RSA 627:3, I, codifies the defense of competing harms. *State v. L'Heureux*, 150 N.H. 822, 825 (2004). We have held that a competing harms defense is available only if: (1) the otherwise illegal conduct is urgently necessary; (2) there is no lawful alternative; and (3) the harm sought to be avoided must outweigh, according to standards of reasonableness, the harm sought to be prevented by the violated statute. *Id.* Under this statute, conduct is justifiable only if it is urgently necessary to avoid a clear and imminent danger; the defense is limited to acts reasonably certain to occur. *Id.* at 826. It is not available to justify unlawful conduct when reasonable, lawful alternatives exist which will cause less, if any, harm. *Id.* at 827.

The offer of proof before the trial court included that: (1) the defendant and his friend had driven to a party; (2) after the friend became intoxicated, the defendant became worried that he would drive and injure himself or others; (3) the defendant's wife was at home in another town with two small children; (4) the defendant had no other friends or family that he could call to come and get him; and (5) the defendant could not remain overnight because he needed medication for an ongoing medical condition, which would also have prevented him from forcibly restraining his friend if he had decided to drive.

In ruling that the defendant had failed to establish the availability of a competing harms defense, the trial court noted that within minutes of the defendant's decision to drive because there was no reasonable alternative, he had an accident and came up with alternatives; he called his wife and the police. We note also that in the statement that he gave to the police at the time of the accident, the defendant asserted that he had asked his friend to come back to his house and when his friend indicated that he was too drunk to drive, the defendant offered to do so.

Having failed to establish the absence of a lawful alternative and the necessity for his conduct, the defendant failed to satisfy the requirement for presenting a competing harms defense. See *State v. Bernard*, 141 N.H. 230, 235-36 (1996) (if no reasonable person, viewing evidence in light most favorable to defendant, could maintain reasonable doubt as to absence of defense then competing harms defense is unavailable to defendant).

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concur.

**Eileen Fox,
Clerk**